

REMARKS/ARGUMENTS

The Office has identified the following groups and is requiring an election of one of the same:

- Group I: Claims 1 and 3-4, drawn to an oil-in-water hair cosmetic;
- Group II: Claims 2-3 and 8-9, drawn to an oil-in-water hair cosmetic made by a specific process; and
- Group III: Claims 5-7, drawn to a preparation process of an oil-in-water hair cosmetic.

Applicant elects with traverse, **Group II**, Claims 2-3 & 8-9, for examination.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Office if restriction is not required (MPEP §803). The burden is on the Office to provide reasons and/or examples to support any conclusion in regard to patentable distinction (MPEP §803). Moreover, when citing lack of unity of invention in a national stage application, the Office has the burden of explaining why each group lacks unity with the others (MPEP § 1893.03(d)), i.e. why a single general inventive concept is nonexistent. The lack of a single inventive concept must be specifically described.

The Office alleges that Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

US 6,251,379 teaches oil-in-water emulsions forming a hair cosmetic that contain A, B and C and that mixtures of high MW dimethylpolysiloxanes with low MW and/or cyclic dimethylpolysiloxanes is known, but specifically discloses high MW methylpolysiloxane, etc. Further, US 5,304,334 teaches the method of making an emulsion comprising DC Q2-1403 (comprising high and low MW dimethylsiloxanes) and DC Q2 3225C (cyclomethicone/dimethicones).

Annex B of the Administrative Instructions under the PCT, paragraph b (Technical Relationship), states, emphasis added:

The expression "special technical feature" is defined in Rule 13.2 as meaning those technical features that defines a contribution which each of the inventions, ***considered as a whole***, makes over the prior art. The determination is made on the contents of the claims as ***interpreted in light of the description*** and drawings (if any).

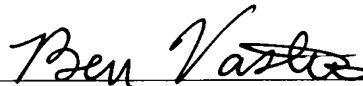
Applicant respectfully submits that the Office did not consider the contribution of each invention, ***as a whole***, in alleging the lack of a special technical feature over the cited reference. Applicant also respectfully submits that the Office has not provided any indication that the contents of the claims ***interpreted in light of the description*** were considered in making this allegation. Therefore, the Office has not met the burden necessary to support the assertion of a lack of unity of the invention.

Accordingly, the requirement for restriction is no longer tenable and should be withdrawn.

Applicant respectfully submits that the above-identified application is now in condition for examination on the merits, and early notice thereof is earnestly solicited.

Respectfully Submitted,

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